

# PUBLIC SUBMISSION

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Draft Chesapeake Bay Total Maximum Daily Load

**Comment On:** EPA-R03-OW-2010-0736-0001  
Clean Water Act Section 303(d): Notice for the Public Review of the Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay

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Comment submitted by Teresa Koon on behalf of West Virginia Department of Environmental Protection and West Virginia Department Agriculture

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## Submitter Information

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**Organization:** West Virginia Department of Environmental Protection and West Virginia Department Agriculture  
**Government Agency Type:** State  
**Government Agency:** West Virginia Department of Environmental Protection and West Virginia Department Agriculture

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## General Comment

WV Comments on draft CB TMDL

It is difficult for West Virginia to comment on the TMDL as we do not currently have a clear understanding of where we stand related to a working scenario that meets West Virginia's allocation. Over the past year, West Virginia has consistently expressed our concerns with many of the decisions and outcomes related to the development of the Chesapeake Bay TMDL. Our technical concerns are well known by EPA, however, we feel the need to provide formal comment and adamantly oppose the imposition by EPA of the backstop TMDL as outlined in the draft TMDL for the following reasons.

**Allocation –** While West Virginia participated in the meetings and conference calls related to the development of the allocation methodology, our positions were consistently not supported. The result is that the allocation methodology for the cap loads to states and jurisdictions favored states that have been developing and increasing the capacity of their wastewater treatment plants and that have been increasing their developed / urban lands. Rural, largely forested states such as West Virginia were not fairly represented in the model or allocation resulting in a smaller cap load allocation and less of an actionable load with which to work. If the Bay were all loaded like West Virginia, the Chesapeake Bay would meet water quality standards.

**Changing Delivery Factors –** Throughout the process, we have experienced numerous changes in delivery factors. It is not clear to West Virginia how delivery factors are calculated and it is frustrating to see that our delivered load increases as we install best management practices (BMPs) over time. We seem to be chasing after an ever moving target.

Model – EPA acknowledges that the model has certain flaws yet states are required to continue watershed implementation planning using this flawed model. West Virginia spent a great deal of time developing realistic implementation scenarios with substantive associated pollutant reductions to only be forced to “play the model game” to address incorrect and inaccurate information in the model.

EPA declared the model frozen at the April 2010 Principals Staff Committee meeting. In addition, on the September 22, 2010 conference call EPA stated, when asked about issues with the model, that no changes would be made prior to the final TMDL coming out and that any corrections or updates would be handled in the phase II process. Yet between West Virginia’s 4th and 5th scenario run the model was altered resulting in a change in delivery factors that were detrimental to West Virginia, a change in the way the cafo/afo land use was being loaded and a change to the credit for certain BMPs, making it impossible for West Virginia to meet our allocation. At the Principals Staff Committee meeting on October 20, West Virginia expressed guarded confidence in our ability to meet our cap based on our scenario 4 model run. Then we received our scenario 5 output and had lost considerable ground toward reductions. EPA explanations did not make sense. EPA expresses their desire to work with West Virginia to prevent implementation of the backstop TMDL, however, the EPA actions above do not support this commitment.

Timeline - EPA did not honor deadlines to states yet held the states to strict and unworkable time frames. EPA did not deliver nutrient cap loads to states until July 1, 2010 and sediment allocations until August 13 2010, yet states were still required to submit draft WIPs by September 1, 2010. This did not allow adequate time to run scenarios through the model or to develop a sound implementation plan. In addition, in the haste to work with states to run scenarios, errors were often made by EPA causing additional delays for the states. Miscalculations and misunderstandings about how BMPs should be represented were an ongoing challenge between EPA and West Virginia that could have been avoided had more time been available. We are currently in the 9th hour without a successful scenario model run and have limited ability to modify our WIP.

Public comment period - The public meetings and public comment period did not allow adequate time for West Virginia residents to become informed and comment on the TMDL. The shortened public comment period resulted in the public meetings being squeezed into a very tight timeframe. West Virginia’s public meetings were 2 working days prior to the deadline for public comments. While we recognize that we requested to have our meetings at the end of the process, had original time frames been adhered to by EPA or had EPA extended the TMDL deadline to May 2011 as requested by states during the process, this crunch would not have occurred.